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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 MISS JAY FRANK FISCHER,

9 Plaintiff,

v.

10 WASHINGTON STATE
11 DEPARTMENT OF CORRECTIONS,
et al.,

12 Defendants.
13

CASE NO. C17-6075 BHS

ORDER DENYING PLAINTIFF'S
MOTION TO PROCEED *IN*
FORMA PAUPERIS, DISMISSING
COMPLAINT WITHOUT
PREJUDICE, AND GRANTING
PLAINTIFF LEAVE TO AMEND

14 This matter comes before the Court on Plaintiff Miss Jay Frank Fischer's
15 ("Fischer") motion to proceed *in forma pauperis* (Dkt. 1) and proposed complaint (Dkt.
16 1-1).

17 On December 28, 2017, Fischer filed the instant motion and proposed complaint.
18 *Id.* Fischer asserts a claim under Title II of the Americans with Disabilities Act of 1990
19 (the "ADA") against Defendant Washington State Department of Corrections ("DOC")
20 requesting that the Court vacate Fischer's current DOC community custody term. Dkt. 1-
21 1 at 4. Fischer also asserts a claim against community corrections officer Bryan Peik for
22 stealing Fischer's wallet. *Id.*

1 The district court may permit indigent litigants to proceed *in forma pauperis* upon
2 completion of a proper affidavit of indigency. *See* 28 U.S.C. § 1915(a); W.D. Wash.
3 Local Rules LCR 3(b). However, the “privilege of pleading *in forma pauperis* . . . in
4 civil actions for damages should be allowed only in exceptional circumstances.” *Wilborn*
5 *v. Escalderon*, 789 F.2d 1328 (9th Cir. 1986). The court has broad discretion in denying
6 an application to proceed *in forma pauperis*. *Weller v. Dickson*, 314 F.2d 598 (9th Cir.
7 1963), *cert. denied* 375 U.S. 845 (1963).

8 Even if Fischer establishes indigency, the Court “may deny leave to proceed *in*
9 *forma pauperis* at the outset if it appears from the face of the proposed complaint that the
10 action is frivolous or without merit.” *Tripathi v. First Nat. Bank & Tr.*, 821 F.2d 1368,
11 1370 (9th Cir. 1987). The Court, however, must allow Fischer “an opportunity to amend
12 [the] complaint unless it is ‘absolutely clear that the deficiencies of the complaint could
13 not be cured by amendment.’” *Franklin v. Murphy*, 745 F.2d 1221, 1228 n.9 (9th Cir.
14 1984) (quoting *Stanger v. City of Santa Cruz*, 653 F.2d 1257, 1257–58 (9th Cir. 1980)).

15 In this case, the Court finds that Fischer has failed to establish exceptional
16 circumstances or assert meritorious claims. The Court is unaware of any authority under
17 the ADA that allows the Court to vacate a state-imposed community custody sentence.
18 Moreover, without the federal claim, the Court does not have jurisdiction over Fischer’s
19 claim against officer Peik. Therefore, the Court **DENIES** the motion to proceed *in forma*
20 *pauperis*, **DISMISSES** the complaint **without prejudice**, and **GRANTS** Fischer leave to
21 amend. Fischer shall file an amended complaint no later than February 2, 2018. Failure
22 to file an amended complaint or otherwise respond will result in **DISMISSAL**.

